

In the Matter of

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Midwest Cable, even with its extraordinarily unique operating relationship with Charter, will simply not be able to provide the same quality of cable service to the residents of the City and the Transaction will result in significant pressure on cable rates, a reduction in capital spending, or both. Allowing Comcast to shed the Minnesota market and place it in the hands of an inexperienced and untested cable operator, therefore, would simply not be in the public interest.

In Comcast's reply, the company rejects reasonable conditions suggested by the City to protect the public interest and to ensure meaningful compliance with those conditions.² The City's first round of comments to the Commission regarding this Transaction documented the City's position that it is a technological imperative for the City to remain a magnet for jobs in the region and Comcast's service in the City provides the City an enormous technological edge in the Minnesota market. The record is completely uncontested regarding Comcast's ability to produce next generation services, especially relative to an unknown, untested spin-off company (Midwest Cable) that will be entirely dependent upon Charter for virtually all of its operational performance.³

² See Comcast reply comments mentioning Eagan in at least four footnotes, #937, 937, 938 and 963.

³ See pages 3-6 and 7 specifically of the City of Eagan's original comments attached, including financial footnotes and consumer impacts not yet addressed by the applicants. Indeed, outside analysts have concluded that Midwest Cable will incur debt in an amount five times Midwest Cable's EBITDA (earnings before interest, taxes, depreciation and amortization) and according to its filings with the Securities and Exchange Commission, Midwest Cable begins with an initial debt load of \$7.8 billion. Comcast has a superior EBITDA. Comcast then (not Midwest Cable and not Charter) will have greater financial strength to invest in new technology, acquire programming and deploy services. Midwest Cable, itself, has no operating history and "will be a highly leveraged company which may reduce its ability to withstand prolonged adverse business conditions" or obtain future financing. Other analysts have reported concerns that proposed asset transfers from Comcast to the newly formed Midwest Cable involve millions of dollars of negative working capital, do not take into account still other third party costs and obligations and do not factor in, nor cap "transition services" provided by Comcast to Midwest Cable. See SEC Form S-1 filed by Comcast on April 28, 2014 at page 1, and the September 30, 2014 letter to Attorney Brian Grogan from Comcast VP for Government Affairs Klayton F. Fennell and Leonard J. Baxt, Executive VP of Midwest Cable, Inc.

Indeed, Comcast's testimony that it is "putting our customers at the center of every decision we make,"⁴ is belied by the fact that it is shedding those very customers in Minnesota. The City renews its objection to the Transaction as currently proposed. It is not in the public interest to ask Eagan and Minnesota consumers to take a step back in the provision of vital communication services and technologies. The proposed spinoff of the City's subscribers to Greatland Connections (now known as Midwest Cable) caused the City and 47 other Minnesota cities to pose some 80 questions to Comcast as to Midwest Cable's legal, technical and financial qualifications. To its credit, Comcast and Midwest Cable representatives eventually provided additional information, but many concerns remain. Until resolved, these concerns pose an unacceptable risk for the City's residents, businesses, and underserved populations.

In Comcast's reply comments it notes the need to show specific harms. There are several as it affects subscribers residing in the City and the greater Twin Cities metro area.

- Comcast concedes that its former "customers will not indefinitely retain their existing '@comcast.net' email address after migrating to the Midwest Cable service."⁵ This means a specific harm to Eagan businesses and home-based businesses that will have to reprint letterhead and business cards. And because former Comcast.net emails will only be forwarded an unspecified "ample period of time" agreeable only to the buyers and sellers, Eagan businesses will have to rebuild databases and stand to lose valuable email following the un-negotiated cut-off date. *This is a specific harm.*
- The company notes in Section III.A-3 of its reply comments that the transactions **expand** the Internet Essentials program. *There is no guarantee of that in Minnesota, where estimates are between 5,200 and 7,500 Twin Cities families could lose basic Internet for homework, access to school district parent portals, etc. This is a specific harm.*^{6 7}

⁴ Neil Smit, CEO of Comcast Cable Division as quoted in "Comcast seeks to fix awful customer service, admits it may take 'a few years,'" Jon Brodtkin, *Ars Technica*, September 26, 2014: <http://arstechnica.com/business/2014/09/comcast-seeks-to-fix-awful-customer-service-admits-it-may-take-a-few-years/>

⁵ Comcast letter to Attorney Brian Grogan, p. 11, Section 4.

⁶ The harm was at first specifically confirmed by Comcast Executive Vice President David Cohen who in May told the Senate Judiciary Committee in a little-noted footnote to his written comments: "Because Comcast will no longer control the cable systems in the markets being divested, it will no longer be able to support Internet Essentials in

- Comcast claims in Sections III.A-1 and III.B that the transaction will “accelerate the deployment of advanced broadband services” and “accelerate the deployment of advanced video products and services.” *If Comcast is allowed to withdraw from the Minnesota market to consolidate on the East and West Coast, those advanced deployments will not be in Eagan or in Minnesota.⁸ As noted in Eagan’s original submission, if Eagan employers are to continue to attract the best and the brightest workers, delays in the deployment of improved broadband connections, speeds, and next generation services constitute a specific harm to Eagan’s competitiveness.*
- *By way of comparison, Charter Communications only recently converted the cities nearest Eagan in its system to digital adapters, some 17 months after Comcast made those upgrades.⁹ Charter is “Still playing catch-up with most other major US MSOs,” according to analyst and cable and video practice leader Alan Breznick.¹⁰*

Comcast asserts in footnote #3 of its reply comments (pages 25-26) that “there can be no plausible claim that the Commission lacks sufficient information to make an informed judgment here,” yet to date Eagan has been provided no estimate of the number of employees Midwest Cable will have to operate its system, and no estimate of what its capital expenditures budget or priorities will be. In addition, on three separate occasions in Minnesota, Comcast has needed to

those communities . . .” See footnote #38, p. 19 of Comcast testimony as quoted in:

<http://redistributingthefuture.blogspot.com/2014/08/comcast-deal-could-end-10-broadband-for.html>

When questioned on that matter, Comcast VP for Government Affairs Klayton F. Fennell and Leonard J. Baxt, Executive VP of Midwest Cable, Inc. later claimed in a September 30, 2014 letter to Attorney Brian Grogan that “Midwest Cable will continue to offer Internet Essentials and, over time, may make changes to properly serve this important constituency.” There is no assurance that the program continues at the same level much less is allowed to “expand.” Figures for the three school districts serving Eagan show significantly more “free and reduced lunch” participants than Comcast currently serves, indicating there is a growing need. Yet, with its unspecified commitment, the company still reserves the right “to make changes.” For the higher estimate of 7,500 families affected and discussion of David Cohen’s testimony, see

<http://redistributingthefuture.blogspot.com/2014/08/comcast-deal-could-end-10-broadband-for.html>

⁷ Eagan has three school districts crossing and within its 33 square miles: Independent School Districts #191, 196 and 197. More than 13,000 students from these districts qualify for free and reduced lunch, according to 2013 data filed with the Minnesota Department of Education. These families are thus also eligible for Comcast’s Internet Essentials program. Not all of these students attend schools in or are from Eagan, but all of them live in the Twin Cities region that Comcast would depart and spin off.

⁸ On page 28 of Comcast’s reply comments it quotes the FCC’s own findings from its Comcast-AT&T order (footnote #12) that “Comcast appears to have a greater ability to manage an accelerated program for upgrading its plant.” Indeed, Charter, which would reportedly be engaged by GreatLand Connections Inc. in a services agreement, is just now undergoing the digital conversion of its system in the Twin Cities area, some 17 months after Comcast carried out those changes.

⁹ Comcast began converting to digital adapters in Eagan, MN in February, 2013. Charter began its digital conversion in September, 2014.

¹⁰ See: <http://www.lightreading.com/cable-video/charter-gains-on-digital-broadband-upgrades/d/d-id/711759>

extend Form 394 deadlines as it provided answers to other questions, revised estimates, and made additional and revised SEC filings. Even while doing so, representatives of Comcast and Midwest Cable note that its current answers and information are “necessarily subject to change.”¹¹ This has resulted in considerable extra expense and uncertainty for cities and cable commissions in Minnesota seeking to evaluate ever-changing information.

The City respectfully requests that if Comcast is allowed to acquire the Time Warner markets, that the Twin Cities market should remain part of Comcast. If the company must spin off a requisite number of subscribers, Comcast should be required to divest in one of its other already highly consolidated markets that abuts competitors with sufficient financial wherewithal to offer competitive services. If Comcast is allowed to spin off the Twin Cities market, specific and verifiable conditions should be required to protect the public interest and reimburse jurisdictions like the City for the extraordinary, unexpected expenses associated with Form 394 due diligence. Suggested conditions are outlined in Eagan’s original reply comments¹²

Given Comcast’s national programming reach, and deployment of what the company calls “the best products in the market,”¹³ the City submits that it is not in the public interest to ask Eagan and Minnesota consumers to take a step back in the provision of vital communications services and technologies.

Nor should Eagan subscribers be made to switch to a customer service experience rated inferior to Comcast’s. The City continues to press Comcast for customer service improvements. Comcast acknowledges “it may take a few years before we can honestly say that a great

¹¹ Page 2, Comcast letter to Attorney Brian Grogan, September 30, 2014.

¹² See Comments of the City of Eagan, ECFS Filing Receipt Confirmation #2014825180835, and as attached with corrected footnotes, particularly unnumbered pages 6, 8 and 9, and footnote 18.

¹³ Emmett Coleman, Comcast VP of Government Affairs, Twin Cities Region, in a certified letter to the City of Eagan, January 30, 2012, requesting franchise renewal and commencing the three-year renewal procedure. Mr. Coleman states, “Our products will be the best and we will offer the most . . . reliable service in the market.” Coleman noted the relationship “benefits both the community and the residents . . .”

customer experience is something we are known for.”¹⁴ That notwithstanding, it must be emphasized that Comcast’s customer satisfaction scores on the 2013 JD Powers survey are 21 points *higher* in the North Central Region than Charter’s. Comcast points out that since 2010 its scores have improved more than any other provider.¹⁵

Comcast asserts that the Transaction will have certain operating efficiencies and that consolidation will make markets more cohesive if there are contiguous service areas.¹⁶ It is implied that not approving the Transaction would create service islands forcing Comcast to inefficiently expend resources where it chooses not to be. Yet, the public record also indicates Comcast renewed its main office lease in St. Paul, Minnesota until 2024 and it will continue to operate a Network Operations Center here.¹⁷ Further, in May, 2014, one month after it announced the proposed Time Warner and Midwest Cable transactions, Comcast Business hired a new high level VP of Business Services based out of the Twin Cities.¹⁸ If Comcast itself is not intending to withdraw its facilities from the market, it cannot be a hardship on the company to require them to continue to operate in Minnesota.

¹⁴ Neil Smit, CEO, Comcast Cable Division, quoted in *Ars Technica*, September 26, 2014; see footnote #4.

¹⁵ See: <http://www.jdpower.com/press-releases/2013-us-residential-television-service-provider-satisfaction-study>. Also see: <http://variety.com/2014/biz/news/comcast-time-warner-cable-remain-among-most-hated-tv-providers-survey-1201145921/>

¹⁶ Comcast Reply Comments in 14-57, Section 4 on page 108 of the redacted public copy.

¹⁷ Ojeda-Zapata, Julio (2014, January 22). "Comcast commits to downtown St. Paul, set to renovate regional HQ." *Saint Paul Pioneer Press*. Retrieved from <http://www.twincities.com>. While the date of this release was prior to the national announcement in April of Comcast’s plans to acquire Time Warner Cable and spin-off the Twin Cities market, leases of this duration had to be approved by Comcast headquarters officials.

¹⁸ See: Robuck, Mike (2014, May 6). "Comcast Business hires Hove as VP of Twin Cities Region". *CED Magazine*. Retrieved from <http://www.cedmagazine.com>. Note the hiring of former Level 3 executive Kalyn Hove as Comcast’s VP for Business for the Twin Cities Region was released in May *after* Comcast’s acquisition plans in April were announced. The article notes Comcast’s “rapidly expanding” Comcast business operations.

As stated previously, the City believes that allowing Comcast to shed the Minnesota market is not in the public interest given the uncertainty over the spin off company – Midwest Cable, given the enormous technological edge Comcast enjoys in the Minnesota market, and given Comcast’s national programming reach. Further, Comcast’s revenues, and thus its resources to make those investments in next generation services, are more than eight times that of Midwest Cable and its operating partner, Charter Communications.

So the real question is what are Midwest Cable’s and Charter Communication’s relative abilities to provide, manage and continue to invest in those next generation services that will serve the public interest and future needs of Eagan residents? Preliminary indications are that programming costs under a combined Midwest Cable/Charter system are significantly higher than Comcast’s programming costs, making a more expensive product for Eagan and Minnesota consumers. As Charter-run systems have experienced greater rates of defection to satellite-based systems, this calls into question revenue assumptions and projections for Midwest Cable - the brand new, untested spin-off company with no operating history.

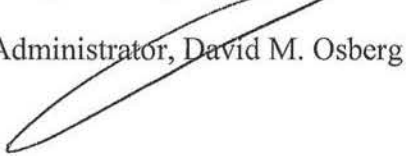
For all the reasons stated in the City’s previous comments, and those here stated, the City requests denial of the Transaction or, in the alternative, Commission imposed conditions as requested to protect the interests of the City and its residents and businesses.

December 22, 2014

Respectfully Submitted by the City of Eagan, MN

A handwritten signature in black ink, appearing to read "David M. Osberg", is written over a horizontal line.

City Administrator, David M. Osberg

A large, stylized handwritten flourish or signature in black ink, extending from the line above and curving downwards and to the left.